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APPLICATION NO	FILING DATE	UPS, NAMED INVENTOR	SEARCHER'S NAME	EXAMINER'S NAME
09/620,038	07/20/2000	Udo Hoss	RD1100001S	8
32842	7590	03/31/2003		
THE LAW OFFICE OF JILL L. WOODBURN, L.L.C. JILL L. WOODBURN 128 SHORE DR. OGDEN DUNES, IN 46368			EXAMINER	GITOMER, RALPH
			ART UNIT	PAPER NUMBER

DATE MAILED 03/31/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/620,038	Applicant(s) Hoss et al.
	Examiner Ralph Gitomer	Art Unit 1651
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
<ul style="list-style-type: none"> • Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. • If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. • If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. • Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). • Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Jan 2, 2003</u>		
2a) <input type="checkbox"/> This action is FINAL . 2b) <input checked="" type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.		
Disposition of Claims		
4) <input checked="" type="checkbox"/> Claim(s) <u>23-50 and 68-79</u> is/are pending in the application.		
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>23-50 and 68-79</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.		
Application Papers		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
Priority under 35 U.S.C. §§ 119 and 120		
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
*See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
Attachment(s)		
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____		

The RCE request received 1/2/03 and the amendment received 11/14/02 have been entered and claims 23-50, 68-79 are currently pending in this application.

5 The rejection under 35 USC 103 over Pfeiffer (6,091,976) is maintained.

Applicant's arguments filed 11/14/02 have been fully considered but they are not persuasive.

10 Applicants argue that Pfeiffer teaches setting an initial glucose concentration in the perfusion solution which is maintained unchanged during testing. The predetermined glucose baseline is set in other words. Whereas the presently claimed invention includes adjusting the starting content of glucose in the perfusate in accordance with a command variable corresponding 15 with the glucose concentration of the body fluid.

It is the examiner's position that as presently claimed, this point of novelty feature is so vague as to not be possible to distinguish from Pfeiffer. Pfeiffer teaches in the abstract, continuously detected signals for monitoring tissue glucose 20 concentrations. The predetermined concentration is set within the physiological range depending on the tissue glucose concentration as described in column 1 last paragraph. The function of the teaching of Pfeiffer and that presently claimed appears identical. See the present specification page 2 last 25 full paragraph.

Claims 23-50, 68-79 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all 5 occurrences.

In claim 23 line 8, ~~the measuring cell~~ lacks antecedent basis. In claim 23 the obtaining measurement signals does not state how the signals are obtained nor from what. And the next step, ~~measuring the measurement signals~~ is not understood.

10 There are no steps presented to accomplish the last determining step. Claim 23 as amended still does not have a step which determines glucose concentration. Note there may be some confusion between content and concentration in the claims. The determining of the starting content of glucose in claims 25 and 15 26 remains indefinite.

Regarding new claims 68-79, in claim 68 ~~in alternating successive transport and dialysis intervals~~ is not understood. Further, ~~measuring measurement signals~~ is unclear because no measurement signals have been obtained and what they might be measured for is not seen. And how can one adjust the starting content of glucose if one must first measure the glucose concentration? If the starting content of glucose is set according to a command of some sort, how can the momentary starting content of glucose be a measure of glucose content of 25 the body fluid? If a feedback is intended to adjust the starting

glucose concentration, it is not found in the claims as presented. Claim 76 contains many values but how they are obtained is not found in the claims.

5 The title of the invention is not aptly descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

10 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm. The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the 15 examiner's supervisor, Michael Wityshyn can be reached on (703) 308-4743. The fax phone number for this Art Unit is (703) 308-4556. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235. For 24 hour access to 20 patent application information 7 days per week, or for filing applications electronically, please visit our website at

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www.uspto.gov and click on the button  Patent Electronic Business Center  for more information.

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R. Gitomer
Ralph Gitomer
Primary Examiner
Group 1651

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